IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.55 OF 2006

Somchand alias
Bhavanji Velji Lodaya
& Anr. ..Petitioners.

Vs.

State of Maharashtra
& Ors. ..Respondents.

Mr.Uday Warunjikar for the Petitioners.

Mr.R.M.Sawant, G.P. for Respondent No.1.

Mr.Rajiv Chavan with Mr.D.A.Dubey i/b.Dr.T.Kaushik for Respondent No.2.

CORAM: R.M. LODHA AND
S.J.VAZIFDAR, JJ.
DATED: 6TH JULY, 2006

P.C. :

We heard Mr.Uday Warunjikar, Advocate for the petitioners. The petitioner no.1 claims to be actively involved in the business of transportation. Petitioner No.2 claims to be journalist and the Founder President and Honorary General Secretary of Maharashtra Rajya Truck Tempo Tankers Bus Vahatuk Mahasangh.

2. By means of this petition, the petitioners seek to raise diverse issues, including that as per the provisions of Motor Vehicles Act, excess load of

overloaded vehicles is required to be off-loaded. Even where the compounding amount is levied, excess load has to be off-loaded before allowing such vehicles to ply on the public roads.

3. The petitioners also seek that in case of export cargo where the pre-shipment certificate is issued by the competent authorities, where the cargo containers are sealed, off-load may not be required and such vehicles be exempted from the scope of section 194 as well as section 200.

4. That the prayers are contradictory in terms is obvious from the fact that on the one hand the petitioners seek that excess load of over-loaded vehicles must be off-loaded even if the compounding amount is levied and fines are collected, on the other hand the petitioners pray that in respect of the containers for export cargo where such containers are sealed and pre-shipment certificate is issued by the competent authorities, the excess load be not off-loaded and they may be exempted from section 194 as well as section 200 of the Motor Vehicles Act.

5. We, accordingly, at the outset, reject the prayer of the Petitioners that the containers/vehicles which

are used for import/export where pre-shipment certificate is issued by the competent authorities and where such containers are sealed, excess load be not off-loaded from such vehicles and that they be exempted from the scope of sections 194 and 200 of the Motor Vehicles Act.

6. We are also not persuaded by the submissions of the counsel for the petitioners that while fixing the fine under section 200 of the Motor Vehicles Act, the State Government must prescribe the minimum possible fine to prompt such vehicles to settle for compounding fees. The three notifications placed on record have been perused by us. We also perused the decision of the Supreme Court in the case of *Paramjit Bhasin & Ors. v. Union of India & Ors.*, where notifications issued by various States, including the State of Maharashtra under the provisions of section 200 of the Motor Vehilces Act, 1988 were under challenge. The counsel for the petitioners highlighted the submission made on behalf of the counsel for the State of Maharashtra therein that while issuing notification dated 24.6.1996 the object of fixing the maximum weights has not been specifically taken care of and it was assured that proper notification keeping in view the objection of

section 113 and 114 shall be issued.

7. The notifications that have been placed on record are notification dated 24.6.1996, 9.8.2001 and 4.2.2006. After 24.6.1996, in the light of the statement made before the Supreme Court, the notification was issued on 9.8.2001 where in exercise of the powers conferred by section 200, the State Government fixed the fine of Rs.100/- for per metric tonne for overloading upto 2 metric tonne and Rs.150/- per metric tonne for the overloading above two metric tonne and part thereof.

8. By the subsequent notification dated 4.2.2006, the State Government prescribed the fine of Rs.2000/- for the overloading and Rs.1000/- for each metric tonne or part thereof of excess load. It is true that subsequent to the notification dated 24.6.1996, in the notification dated 9.8.2001, the fine prescribed was Rs.100/- each for per metric tonne for overloading upto 2 metric tonne and Rs.150/- each for per metric tonne for overloading 2 metric tonne. By the subsequent notification dated 4.2.2006, the fine has been increased to Rs.2000/- for overloading and Rs.1000/- for each metric tonne or part thereof of each excess load. But, in our considered view, the

prescribed fine cannot be said to illegal or unconstitutional or arbitrary. It is a matter of policy which does not call for any judicial interference.

9. As regards the grievance raised by the petitioners that excess load of overloaded vehicles is required to be off-loaded even when compounding amount is levied, we may have a look at section 114 of the Motor Vehicles Act, 1988 that authorises the State Government to empower officers to weight goods carriages and, wherever it is found that the vehicle is carrying excess load, to direct the driver to unload the excess goods at his own risk and not so proceed unless such excess load is unloaded. Section 114 reads thus :

> "**114. Power to have vehicle weighed.**-(1) [Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailor is being used in contravention of section 113,] require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to

> contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions."

10. Needless to say that the authorised officer of the Motor Vehicles Department when requires the driver to convey the vehicle to a weighing device and if on such weighment the vehicle is found to contravene in respect of the provisions contained in section 113 regarding the weight, such officer needs to direct the driver to off-load the excess weight by order in writing and not to remove the vehicle or trailor from that place until the excess weight has been off-loaded.

11. The State Government shall ensure that necessary instructions are issued to the officers of the motor vehicle department to comply with the provisions contained in section 114 of the Motor Vehicles Act, 1988.

12. With the aforesaid direction, we dispose of this writ petition (P.I.L.).

(R.M. LODHA, J.)

(S.J. VAZIFDAR, J.)